IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 967 of 1989

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

GANGJI RAMJI

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Appearance:

MR HL JANI, AGP, FOR APPELLANT

MR CH VORA FOR THE RESPONDENT

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CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

1. The appellant-original defendant has preferred the present appeal against the judgement and order passed by Civil Judge (Senior Division), Bhuj at Kutch dated 28th February 1989, whereby the trial court has partly allowed the suit filed by the present respondent-original plaintiff.

2. The original plaintiff-present respondent is a partnership firm, carrying on the business of construction and is a registered contractor with the State Government. The State Government invited tenders on 31st July 1979 for the work of construction of residential and non-residential building at Nakhtrana, District Kutch. The Irrigation Project Division of the Executive Engineer at Bhuj has accepted the tender of the plaintiff and site was given to the plaintiff for execution of the work. Subsequently because of non-acquisition of the land, the State Government was required to change the site and the contractor was directed to carry on construction work at the new site.

3. It is the case of the plaintiff that before he could be directed to change the site he has started construction work and has also purchased materials at the original site. In that regard he has incurred expenses and therefore claimed Rs.79,129.50 along with interest at the rate of 12% from the date of the suit till realisation. The plaintiff has also claimed interest for delayed payment in respect of the final bill.

4. The trial court, after considering the evidence on record and evidence of the plaintiff as well as the department, has held that the plaintiff had incurred expenses at the original site and is entitled for the expenses so incurred.

5. The plaintiff has claimed only 25% rise in price as per the Schedule annexed to the plaint and he has given detailed work out at Annexure-A to the plaint wherein he has given the calculation regarding 25% rise on the bill amount right from 30th Marach 1980 to 30th September 1983.

5. We have heard Mr. H.L. Jani, learned AGP for the appellant and Mr. C.H. Vora for the respondent and have also perused the impugned judgement and the oral and documentary evidence on record. Mr. Vora, learned Advocate for the original plaintiff has supported the judgement of the trial court and has contended that looking to the particular facts and circumstances of the case, the trial court was justified in granting 25% rise

in the contract amount. Mr. Jani, learned AGP, was not in a position to justify the change of the site and the delay caused for entrusting the new work at the new site. He was also not in a position to assail the reasonings and the findings of the trial for granting 25% rise on the estimated cost of the contract amount.

6. We have gone through the evidence and the record and we are of the opinion that the State Government has not put forward any justification for changing the site. The tender could have been invited after finalisation of the site. It is not in dispute that the contractor was required to complete the work within a stipulated time and therefore he had started work at the original site and had also purchased the material for which he is entitled the amount he has claimed in the suit. The trial court has granted only 25% rise in the price of the material and has not granted any interest on the delayed payment.

7 We are in complete agreement with the appreciation of the oral and documentary evidence on record on the part of the trial court, the conclusions drawn therefrom and the findings of fact recorded. We are, therefore, not inclined to interfere in the present appeal and the same is, therefore, dismissed. No order as to costs.

[KSHITIJ R. VYAS, J.]

[K.S. JHAVERI, J.]

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